

U.S. Patent Application Serial No. 10/607,891
Reply to Office Action dated November 14, 2006

Remarks:

Applicants have read and considered the Office Action November 14, 2006 and the references cited therein. New claim 58 has been added. Claims 1-58 are currently pending.

The Office Action indicated that an appropriate reference to the International Application was not made and that Rembrand et al. still appears to be a valid reference. A petition has been filed to accept the priority claim and explaining the circumstances for the delay. Applicants note that a decision has still not been received on the petition, which was filed over one year ago. Applicants assert that upon granting of the petition, Rembrand would be removed as a reference.

Claims 1-5, 15, 16, 18, 21-34, 36, 37, 39, 40, 42, 44, 48, 49, 52, 53 and 56 were rejected under 35 U.S.C. § 102(b) as being anticipated by Rembrand et al. As discussed above, Applicants assert that a proper priority claim is being established and that Rembrand should be removed as a prior art reference. Applicants request that the rejection over Rembrand be withdrawn.

Claims 6 and 51 were rejected under 35 U.S.C. § 102(b) as being anticipated by Rembrand in view of Mackie 1202VLZ Pro Mixer Owner's Manual. Applicants again assert that the priority claim is being established and that the rejection should be withdrawn as Rembrand is not a proper prior art reference.

Claims 1, 20, 21 and 35 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kandel et al. The Office Action states that claim 1 is limited to a system for enhancing the hearing of certain sounds and states that Kandel discloses a signal processing circuit and method for increasing speech intelligibility. Moreover, the Office Action asserts that Kandel discloses a speaker that corresponds to the "electro-acoustic transducer" as recited and a mixer 113 that corresponds to the "compensatory signal generator" as recited. The mixer 113 generates a "compensatory signal" based on the output from filter 120, which corresponds to a

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"compensatory waveform" based on "otoacoustic emissions" received by microphone 118. The Office Action states that therefore, Kandel anticipates all limitations of the claim.

Applicants assert that the Kandel reference does not anticipate each and every limitation of the rejected claims. Applicants assert that the speaker 117 does not correspond to an "electro-acoustic transducer" as the Office Action fails to consider the further limitation that the electro-acoustic transducer produces sounds *in the vicinity of the ear*. Applicants assert that the present invention includes an earphone and the cited reference only provides a speaker, which would not be obvious to one of ordinary skill in the art. Applicants assert that a speaker is not a non-obvious element for an earphone. Applicants assert that the Kandel reference does not provide the electro-acoustic transducer for producing sounds in the vicinity of an ear according to signals provided thereto. Applicants further assert that the compensatory waveform is not determined according to ear otoacoustic emissions. Therefore, Applicants assert that the rejection of claim 1 to Kandel should be withdrawn. Applicants further assert that Kandel does not teach or suggest the limitations of claims 20, 21 and 35 for at least the same reasons. The Office Action indicated that these arguments were mere allegations. However, Applicants assert that one of ordinary skill in the art would understand these arguments and their bases. Applicants assert that one ordinarily skill in the art would understand that they are not mere allegations.

Claims 43-47 and 50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rembrand. Applicants assert that Rembrand is not prior art to the present application for at least the reasons discussed above. Applicants therefore request that the rejection under 35 U.S.C. § 103(a) over Rembrand be withdrawn. As discussed above, Applicants assert that Rembrand is not a proper prior art reference. Applicants therefore request that the rejection over Rembrand be withdrawn.

Claims 13 and 17 were objected to but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants

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thank the Examiner for the indication of allowable subject matter but have chosen not to rewrite the claims in independent form at this time.

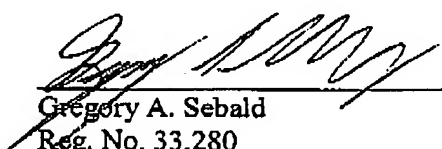
New claim 58 is similar to claim 17 and is believed to patentably distinguish over the prior art. Applicant request that claim 58 be allowed.

Applicants assert that the claims are in condition for allowance and request that a Notice of Allowance be granted. If the Examiner feels that a telephone interview may be helpful in this matter, please contact Applicants' representative at 612.336.4728.

Respectfully submitted,

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